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Report of the International Law Commission on the work of its sixty-third session

Report of the Sixth Committee

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I. Introduction

1. The item entitled "Report of the International Law Commission on the work of its sixty-third session" was included in the provisional agenda of the sixty-sixth session of the General Assembly pursuant to Assembly resolution 65/26 of 6 December 2010.

2. At its 2nd plenary meeting, on 16 September 2011, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 18th to 28th meetings and at its 30th meeting, from 24 to 28 October, on 31 October and on 1, 2, 4 and 11 November 2011. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/66/SR.18-28 and 30).

4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its sixty-third session (A/66/10).[1]

5. The Chair of the International Law Commission at its sixty-third session introduced the report of the Commission: chapters I to V at the 18th meeting, on 24 October, chapters VI, VIII and IX at the 21st meeting, on 27 October, and chapters VII, X, XI, XII and XIII at the 25th meeting, on 31 October (see A/C.6/66/SR.18, 21 and 25).

[1] The addendum to the report (A/66/10/Add.1) had not yet been issued.

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6. At the 26th meeting, on 1 November, the Director of the Codification Division gave, pursuant to paragraph 7 of General Assembly resolution 65/26, an oral report on assistance to special rapporteurs of the International Law Commission.

II. Consideration of proposals

A. Draft resolution A/C.6/66/L.26

7. At the 30th meeting, on 11 November, the representative of Guatemala, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-third session" (A/C.6/66/L.26).

8. At the same meeting, the Committee adopted draft resolution A/C.6/66/L.26 without a vote (see para. 14, draft resolution I).

9. Also at the same meeting, the representative of Chile, on behalf of the Rio Group, made a statement in explanation of position after the adoption of the draft resolution (see A/C.6/66/SR.30).

B. Draft resolution A/C.6/66/L.21

10. At the 30th meeting, on 11 November, the representative of Thailand, on behalf of the Bureau, introduced a draft resolution entitled "Effects of armed conflicts on treaties" (A/C.6/66/L.21).

11. At the same meeting, the Committee adopted draft resolution A/C.6/66/L.21 without a vote (see para. 14, draft resolution II).

C. Draft resolution A/C.6/66/L.22

12. At the 30th meeting, on 11 November, the representative of Thailand, on behalf of the Bureau, introduced a draft resolution entitled "Responsibility of international organizations" (A/C.6/66/L.22) and orally revised it by adding the following paragraph as the fifth preambular paragraph:

> "*Taking note* of the comments of Governments and the discussion in the Sixth Committee at the sixty-sixth session of the General Assembly on this topic".

13. At the same meeting, the Committee adopted draft resolution A/C.6/66/L.22, as orally revised, without a vote (see para. 14, draft resolution III).

III. Recommendations of the Sixth Committee

14. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the International Law Commission on the work of its sixty-third session

The General Assembly,

Having considered the report of the International Law Commission on the work of its sixty-third session,[1]

Emphasizing the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Recalling also the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

Reaffirming the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

Recognizing the importance of the work of the special rapporteurs of the International Law Commission,

Welcoming the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

Acknowledging the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

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[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

[2] Resolution 2625 (XXV), annex.

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the General Assembly,

1. *Takes note* of the report of the International Law Commission on the work of its sixty-third session;[1]

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its sixty-third session;

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Commends* the International Law Commission for the completion of its work on the draft articles on the responsibility of international organizations,[3] the draft articles on the effects of armed conflicts on treaties,[4] and the Guide to Practice on Reservations to Treaties;[5]

5. *Decides* that the consideration of chapter IV of the report of the International Law Commission on the work of its sixty-third session, dealing with the topic "Reservations to treaties", shall be continued at the sixty-seventh session of the General Assembly, during the consideration of the report of the Commission on the work of its sixty-fourth session;

6. *Draws the attention* of Governments to the importance for the International Law Commission of having their views on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding:

(a) Immunity of State officials from foreign criminal jurisdiction;

(b) Expulsion of aliens;

(c) Protection of persons in the event of disasters;

(d) The obligation to extradite or prosecute (*aut dedere aut judicare*);

(e) Treaties over time;

(f) The most-favoured-nation clause;

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[3] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), chap. V, sect. E.

[4] Ibid., chap. VI, sect. E.

[5] Ibid., chap. IV, sect. F.

7. *Takes note* of paragraphs 365 to 369 of the report of the International Law Commission and, in particular, of the inclusion of the topics "Formation and evidence of customary international law", "Protection of the atmosphere", "Provisional application of treaties", "The fair and equitable treatment standard in international investment law" and "Protection of the environment in relation to armed conflicts" in the long-term programme of work of the Commission,[6] and also takes note of the respective comments made by Member States;

8. *Invites* the International Law Commission to continue to give priority to, and work towards the conclusion of, the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)";

9. *Takes note* of the oral report by the Secretariat on assistance to special rapporteurs of the International Law Commission[7] and of paragraph 400 of the report of the Commission, and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002;

10. *Also takes note* of paragraphs 370 to 388 of the report of the International Law Commission, and in this regard welcomes the work of the Commission during its sixty-third session to improve its methods of work relating to the role of the special rapporteurs, the study groups, the Drafting Committee, the Planning Group, the preparation of commentaries to draft articles, the final form of the work undertaken on a specific topic, the Commission's report and the relationship with the Sixth Committee;

11. *Welcomes*, in this regard, in particular, the decision of the International Law Commission to define a tentative schedule for the development of any new topic, to periodically review the attainment of annual targets, and to discuss a preliminary plan for the next annual session at the end of each session, and invites the Commission to make such information available to Member States;

12. *Decides* to revert to the consideration of the recommendation contained in paragraph 388 of the report of the International Law Commission during the sixty-seventh session of the General Assembly;

13. *Invites* the International Law Commission to continue taking measures to enhance its efficiency and productivity and to consider making proposals to Member States to that end;

14. *Encourages* the International Law Commission to continue taking cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work;

15. *Takes note* of paragraphs 389 to 391 and 413 to 415 of the report of the International Law Commission and, while acknowledging the exceptional character of its short duration, decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 7 May to 1 June and from 2 July to 3 August 2012, and requests the Secretariat to present options on how to secure

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[6] Ibid., chap. XIII, para. 365.

[7] Ibid., *Sixty-sixth Session, Sixth Committee*, 26th meeting (A/C.6/66/SR.26), and corrigendum; see also A/64/283 and A/65/186.

earlier dates for the sessions of the Commission to ensure optimal working conditions for the Commission and the timely publication of its report to the General Assembly;

16. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission and the Sixth Committee at the sixty-seventh session of the General Assembly, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-seventh session of the Assembly;

17. *Encourages* delegations, during the debate on the report of the International Law Commission, to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

18. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

19. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

20. *Takes note* of paragraphs 418 to 422 of the report of the International Law Commission with regard to cooperation and interaction with other bodies, and encourages the Commission to continue the implementation of articles 16 (*e*), 25 and 26 of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

21. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

22. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission, including in the preparation of memorandums and studies on topics on the agenda of the Commission;

23. *Approves* the conclusions reached by the International Law Commission in paragraph 402 of its report, and reaffirms its previous decisions concerning the documentation and summary records of the Commission;[8]

24. *Welcomes* the efforts of the Secretariat to include on a trial basis the provisional summary records on the website relating to the work of the International Law Commission, encourages their immediate inclusion as soon as the electronic

[8] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

versions are received by the secretariat of the Commission, and looks forward to the institutionalization of this practice;

25. *Takes note* of paragraphs 403 to 405 of the report of the International Law Commission, and stresses the need to expedite the preparation of the summary records of the Commission;

26. *Also takes note* of paragraphs 406 to 409 of the report of the International Law Commission, stresses the value of the *Yearbook of the International Law Commission*, and requests the Secretary-General to ensure its timely publication in all official languages;

27. *Further takes note* of paragraph 410 of the report of the International Law Commission, expresses its appreciation to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the fund;

28. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission;[9]

29. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

30. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue considering ways to improve the structure and content of the Seminar;

31. *Underlines the importance* of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission and, in this regard, requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission at the sixty-sixth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

32. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

33. *Also requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due

[9] www.un.org/law/ilc.

anticipation and no later than the prescribed time limit for reports in the General Assembly;

34. *Encourages* the International Law Commission to continue considering ways in which specific issues on which the views of Governments would be of particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

35. *Recommends* that the debate on the report of the International Law Commission at the sixty-seventh session of the General Assembly commence on 29 October 2012.

Draft resolution II
Effects of armed conflicts on treaties

The General Assembly,

Having considered chapter VI of the report of the International Law Commission on the work of its sixty-third session,[1] which contains the draft articles on the effects of armed conflicts on treaties,

Noting that the International Law Commission decided to recommend to the General Assembly that it take note of the draft articles on the effects of armed conflicts on treaties in a resolution and annex the draft articles to that resolution, and that it consider, at a later stage, the elaboration of a convention on the basis of the draft articles,[2]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (*a*), of the Charter of the United Nations,

Noting that the subject of the effects of armed conflicts on treaties is of major importance in the relations of States,

1. *Welcomes* the conclusion of the work of the International Law Commission on the effects of armed conflicts on treaties and its adoption of the draft articles and a detailed commentary on the subject;[1]

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the articles on the effects of armed conflicts on treaties, presented by the International Law Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action;

4. *Decides* to include in the provisional agenda of its sixty-ninth session an item entitled "Effects of armed conflicts on treaties" with a view to examining, inter alia, the question of the form that might be given to the articles.

Annex
Effects of armed conflicts on treaties

Part One
Scope and definitions

Article 1
Scope

The present articles apply to the effects of armed conflict on the relations of States under a treaty.

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[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

[2] Ibid., para. 97.

Article 2
Definitions

For the purposes of the present articles:

(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation, and includes treaties between States to which international organizations are also parties;

(b) "Armed conflict" means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups.

Part Two
Principles

Chapter I
Operation of treaties in the event of armed conflicts

Article 3
General principle

The existence of an armed conflict does not ipso facto terminate or suspend the operation of treaties:

(a) As between States parties to the conflict;

(b) As between a State party to the conflict and a State that is not.

Article 4
Provisions on the operation of treaties

Where a treaty itself contains provisions on its operation in situations of armed conflict, those provisions shall apply.

Article 5
Application of rules on treaty interpretation

The rules of international law on treaty interpretation shall be applied to establish whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict.

Article 6
Factors indicating whether a treaty is susceptible to termination, withdrawal or suspension

In order to ascertain whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict, regard shall be had to all relevant factors, including:

(a) The nature of the treaty, in particular its subject matter, its object and purpose, its content and the number of parties to the treaty; and

(b) The characteristics of the armed conflict, such as its territorial extent, its scale and intensity, its duration and, in the case of non-international armed conflict, also the degree of outside involvement.

Article 7
Continued operation of treaties resulting from their subject matter

An indicative list of treaties, the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict, is to be found in the annex to the present articles.

Chapter II
Other provisions relevant to the operation of treaties

Article 8
Conclusion of treaties during armed conflict

1. The existence of an armed conflict does not affect the capacity of a State party to that conflict to conclude treaties in accordance with international law.

2. States may conclude agreements involving termination or suspension of a treaty or part of a treaty that is operative between them during situations of armed conflict, or may agree to amend or modify the treaty.

Article 9
Notification of intention to terminate or withdraw from a treaty or to suspend its operation

1. A State intending to terminate or withdraw from a treaty to which it is a Party, or to suspend the operation of that treaty, as a consequence of an armed conflict shall notify the other State Party or States Parties to the treaty, or its depositary, of such intention.

2. The notification takes effect upon receipt by the other State Party or States Parties, unless it provides for a subsequent date.

3. Nothing in the preceding paragraphs shall affect the right of a Party to object within a reasonable time, in accordance with the terms of the treaty or other applicable rules of international law, to the termination of or withdrawal from the treaty, or suspension of its operation.

4. If an objection has been raised in accordance with paragraph 3, the States concerned shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

5. Nothing in the preceding paragraphs shall affect the rights or obligations of States with regard to the settlement of disputes insofar as they have remained applicable.

Article 10
Obligations imposed by international law independently of a treaty

The termination of or the withdrawal from a treaty, or the suspension of its operation, as a consequence of an armed conflict, shall not impair in any way the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of that treaty.

Article 11
Separability of treaty provisions

Termination, withdrawal from or suspension of the operation of a treaty as a consequence of an armed conflict shall, unless the treaty otherwise provides or the Parties otherwise agree, take effect with respect to the whole treaty except where:

(a) The treaty contains clauses that are separable from the remainder of the treaty with regard to their application;

(b) It appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other Party or Parties to be bound by the treaty as a whole; and

(c) Continued performance of the remainder of the treaty would not be unjust.

Article 12
Loss of the right to terminate or withdraw from a treaty or to suspend its operation

A State may no longer terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict if, after becoming aware of the facts:

(a) It shall have expressly agreed that the treaty remains in force or continues in operation; or

(b) It must by reason of its conduct be considered as having acquiesced in the continued operation of the treaty or in its maintenance in force.

Article 13
Revival or resumption of treaty relations subsequent to an armed conflict

1. Subsequent to an armed conflict, the States Parties may regulate, on the basis of agreement, the revival of treaties terminated or suspended as a consequence of the armed conflict.

2. The resumption of the operation of a treaty suspended as a consequence of an armed conflict shall be determined in accordance with the factors referred to in article 6.

Part Three
Miscellaneous

Article 14
Effect of the exercise of the right to self-defence on a treaty

A State exercising its inherent right of individual or collective self-defence in accordance with the Charter of the United Nations is entitled to suspend in whole or in part the operation of a treaty to which it is a Party insofar as that operation is incompatible with the exercise of that right.

Article 15
Prohibition of benefit to an aggressor State

A State committing aggression within the meaning of the Charter of the United Nations and resolution 3314 (XXIX) of the General Assembly of the United Nations shall not terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict that results from the act of aggression if the effect would be to the benefit of that State.

Article 16
Decisions of the Security Council

The present articles are without prejudice to relevant decisions taken by the Security Council in accordance with the Charter of the United Nations.

Article 17
Rights and duties arising from the laws of neutrality

The present articles are without prejudice to the rights and duties of States arising from the laws of neutrality.

Article 18
Other cases of termination, withdrawal or suspension

The present articles are without prejudice to the termination, withdrawal or suspension of treaties as a consequence of, inter alia: (a) a material breach; (b) supervening impossibility of performance; or (c) a fundamental change of circumstances.

Annex
Indicative list of treaties referred to in article 7

(a) Treaties on the law of armed conflict, including treaties on international humanitarian law;

(b) Treaties declaring, creating or regulating a permanent regime or status or related permanent rights, including treaties establishing or modifying land and maritime boundaries;

(c) Multilateral law-making treaties;

(d) Treaties on international criminal justice;

(e) Treaties of friendship, commerce and navigation and agreements concerning private rights;

(f) Treaties for the international protection of human rights;

(g) Treaties relating to the international protection of the environment;

(h) Treaties relating to international watercourses and related installations and facilities;

(i) Treaties relating to aquifers and related installations and facilities;

(j) Treaties which are constituent instruments of international organizations;

(k) Treaties relating to the international settlement of disputes by peaceful means, including resort to conciliation, mediation, arbitration and judicial settlement;

(l) Treaties relating to diplomatic and consular relations.

Draft resolution III
Responsibility of international organizations

The General Assembly,

Having considered chapter V of the report of the International Law Commission on the work of its sixty-third session,[1] which contains the draft articles on the responsibility of international organizations,

Noting that the International Law Commission decided to recommend to the General Assembly that it take note of the draft articles on the responsibility of international organizations in a resolution and annex the draft articles to that resolution, and that it consider, at a later stage, the elaboration of a convention on the basis of the draft articles,[2]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of responsibility of international organizations is of major importance in the relations of States and international organizations,

Taking note of the comments of Governments and the discussion in the Sixth Committee at the sixty-sixth session of the General Assembly on this topic,[3]

1. *Welcomes* the conclusion of the work of the International Law Commission on responsibility of international organizations and its adoption of the draft articles and a detailed commentary on the subject;[1]

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the articles on the responsibility of international organizations, presented by the International Law Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments and international organizations without prejudice to the question of their future adoption or other appropriate action;

4. *Decides* to include in the provisional agenda of its sixty-ninth session an item entitled "Responsibility of international organizations", with a view to examining, inter alia, the question of the form that might be given to the articles.

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[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

[2] Ibid., para. 85.

[3] See *Official Records of the General Assembly, Sixty-sixth Session, Sixth Committee*, 18th to 28th and 30th meetings (A/C.6/66/SR.18 28 and 30), and corrigendum.

Annex
Responsibility of international organizations

Part One
Introduction

Article 1
Scope of the present articles

1. The present articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

Article 2
Use of terms

For the purposes of the present articles:

(a) "International organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities;

(b) "Rules of the organization" means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;

(c) "Organ of an international organization" means any person or entity which has that status in accordance with the rules of the organization;

(d) "Agent of an international organization" means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

Part Two
The internationally wrongful act of an international organization

Chapter I
General principles

Article 3
Responsibility of an international organization for its internationally wrongful acts

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

Article 4
Elements of an internationally wrongful act of an international organization

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(a) Is attributable to that organization under international law; and

(b) Constitutes a breach of an international obligation of that organization.

Article 5
Characterization of an act of an international organization as internationally wrongful

The characterization of an act of an international organization as internationally wrongful is governed by international law.

Chapter II
Attribution of conduct to an international organization

Article 6
Conduct of organs or agents of an international organization

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

Article 7
Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

Article 8
Excess of authority or contravention of instructions

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

Article 9
Conduct acknowledged and adopted by an international organization as its own

Conduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

Chapter III
Breach of an international obligation

Article 10
Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

Article 11
International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

Article 12
Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 13
Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

Chapter IV
Responsibility of an international organization in connection with the act of a State or another international organization

Article 14
Aid or assistance in the commission of an internationally wrongful act

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

(a) The former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that organization.

Article 15
Direction and control exercised over the commission of an internationally wrongful act

An international organization which directs and controls a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

(a) The former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that organization.

Article 16
Coercion of a State or another international organization

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(b) The coercing international organization does so with knowledge of the circumstances of the act.

Article 17
Circumvention of international obligations through decisions and authorizations addressed to members

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful

if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed.

Article 18
Responsibility of an international organization member of another international organization

Without prejudice to articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in articles 61 and 62 for States that are members of an international organization.

Article 19
Effect of this Chapter

This Chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

Chapter V
Circumstances precluding wrongfulness

Article 20
Consent

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent.

Article 21
Self-defence

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

Article 22
Countermeasures

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a State or another international organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with the substantive and procedural conditions required by international law, including those set forth in this Chapter of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member State or international organization unless:

(a) The conditions referred to in paragraph 1 are met;

(b) The countermeasures are not inconsistent with the rules of the organization; and

(c) No appropriate means are available for otherwise inducing compliance with the obligations of the responsible State or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member State or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 23
Force majeure

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to force majeure, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) The situation of force majeure is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) The organization has assumed the risk of that situation occurring.

Article 24
Distress

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(a) The situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) The act in question is likely to create a comparable or greater peril.

Article 25
Necessity

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(a) Is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(b) Does not seriously impair an essential interest of the State or States towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(a) The international obligation in question excludes the possibility of invoking necessity; or

(b) The organization has contributed to the situation of necessity.

Article 26
Compliance with peremptory norms

Nothing in this Chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27
Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:

(a) Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) The question of compensation for any material loss caused by the act in question.

Part Three
Content of the international responsibility of an international organization

Chapter I
General principles

Article 28
Legal consequences of an internationally wrongful act

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

Article 29
Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

Article 30
Cessation and non-repetition

The international organization responsible for the internationally wrongful act is under an obligation:

(a) To cease that act, if it is continuing;

(b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31
Reparation

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

Article 32
Relevance of the rules of the organization

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member States and organizations.

Article 33
Scope of international obligations set out in this Part

1. The obligations of the responsible international organization set out in this Part may be owed to one or more States, to one or more other organizations, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

Chapter II
Reparation for injury

Article 34
Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

Article 35
Restitution

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) Is not materially impossible;

(b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36
Compensation

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage, including loss of profits insofar as it is established.

Article 37
Satisfaction

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

Article 38
Interest

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39
Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

Article 40
Ensuring the fulfilment of the obligation to make reparation

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this Chapter.

Chapter III
Serious breaches of obligations under peremptory norms of general international law

Article 41
Application of this Chapter

1. This Chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

Article 42
Particular consequences of a serious breach of an obligation under this Chapter

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.

3. Article 42 is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this Chapter applies may entail under international law.

Part Four
The implementation of the international responsibility of an international organization

Chapter I
Invocation of the responsibility of an international organization

Article 43
Invocation of responsibility by an injured State or international organization

A State or an international organization is entitled as an injured State or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

(a) That State or the former international organization individually;

(b) A group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) Specially affects that State or that international organization; or

(ii) Is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Article 44
Notice of claim by an injured State or international organization

1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.

2. The injured State or international organization may specify in particular:

(a) The conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;

(b) What form reparation should take in accordance with the provisions of Part Three.

Article 45
Admissibility of claims

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.

2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

Article 46
Loss of the right to invoke responsibility

The responsibility of an international organization may not be invoked if:

(a) The injured State or international organization has validly waived the claim;

(b) The injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 47
Plurality of injured States or international organizations

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

Article 48
Responsibility of an international organization and one or more States or international organizations

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.

2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(a) Do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(b) Are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

Article 49
Invocation of responsibility by a State or an international organization other than an injured State or international organization

1. A State or an international organization other than an injured State or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) Performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

Article 50
Scope of this Chapter

Chapter I is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

Chapter II
Countermeasures

Article 51
Object and limits of countermeasures

1. An injured State or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

Article 52
Conditions for taking countermeasures by members of an international organization

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

(a) The conditions referred to in article 51 are met;

(b) The countermeasures are not inconsistent with the rules of the organization; and

(c) No appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.

2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 53
Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) Obligations for the protection of human rights;

(c) Obligations of a humanitarian character prohibiting reprisals;

(d) Other obligations under peremptory norms of general international law.

2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(a) Under any dispute settlement procedure applicable between it and the responsible international organization;

(b) To respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

Article 54
Proportionality of countermeasures

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 55
Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State or international organization shall:

(a) Call upon the responsible international organization, in accordance with article 44, to fulfil its obligations under Part Three;

(b) Notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken and, if already taken, must be suspended without undue delay if:

(a) The internationally wrongful act has ceased; and

(b) The dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

Article 56
Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

Article 57
Measures taken by States or international organizations other than an injured State or organization

This Chapter does not prejudice the right of any State or international organization, entitled under article 49, paragraphs 1 to 3, to invoke the responsibility of another international organization, to take lawful measures against

that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

Part Five
Responsibility of a State in connection with the conduct of an international organization

Article 58
Aid or assistance by a State in the commission of an internationally wrongful act by an international organization

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) The State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the internationai responsibility of that State under the terms of article 58.

Article 59
Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) The State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of article 59.

Article 60
Coercion of an international organization by a State

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(b) The coercing State does so with knowledge of the circumstances of the act.

Article 61
Circumvention of international obligations of a State member of an international organization

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

Article 62
Responsibility of a State member of an international organization for an internationally wrongful act of that organization

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:

(a) It has accepted responsibility for that act towards the injured party; or

(b) It has led the injured party to rely on its responsibility.

2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

Article 63
Effect of this Part

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

Part Six
General provisions

Article 64
Lex specialis

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

Article 65
Questions of international responsibility not regulated by these articles

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an

internationally wrongful act to the extent that they are not regulated by these articles.

Article 66
Individual responsibility

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

Article 67
Charter of the United Nations

These articles are without prejudice to the Charter of the United Nations.